

SENATE, No. 2720

STATE OF NEW JERSEY
219th LEGISLATURE

INTRODUCED JULY 28, 2020

Sponsored by:

Senator NIA H. GILL

District 34 (Essex and Passaic)

SYNOPSIS

Regulates certain rental-purchase agreements.

CURRENT VERSION OF TEXT

As introduced.



1 **AN ACT** concerning rental-purchase agreements and supplementing
2 P.L.1960, c.39 (C.56:8-1 et seq.).

3

4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6

7 1. This act shall be known and may be cited as the "New Jersey
8 Rental-Purchase Consumer Protection Act."

9

10 2. The Legislature finds and declares:

11 a. There is a need for consumers to be able to rent personal
12 property for personal, family, and household purposes, with the
13 option of returning the property at the end of any rental period or
14 acquiring ownership of the property after renting it for a period of
15 time.

16 b. Consumers who are interested in entering into rental-
17 purchase agreements are entitled to know the terms and conditions
18 on which the property is being offered and, to that end, appropriate
19 disclosures regarding the nature, cost and other terms of these
20 transactions should be required in advertisements, on price cards
21 and in rental-purchase agreements.

22 c. Consumers who choose to enter into rental-purchase
23 agreements are further entitled to certain substantive rights, services
24 and protections as part of that transaction, including the right to
25 reduced rental payments if the consumer's income is reduced, the
26 right to maintenance and service of the property during the rental
27 term, grace periods for late payments and the right to reinstate
28 terminated agreements without losing the benefit of rental payments
29 previously made.

30 d. Consumers and merchants alike will benefit from legislation
31 clarifying their respective rights and responsibilities in rental-
32 purchase transactions.

33

34 3. As used in this act:

35 "Cash price" means the price for which the merchant would sell
36 the rented property to a consumer for cash on the date of the rental-
37 purchase agreement, subject to the limits established in section 11
38 of this act.

39 "Consumer" means a natural person who rents personal property
40 under a rental-purchase agreement.

41 "Director" means the director of the Division of Consumer
42 Affairs in the Department of Law and Public Safety.

43 "Merchant" means a person who regularly provides the use of
44 property through rental-purchase agreements and to whom rental
45 payments are initially payable on the face of the rental-purchase
46 agreement.

47 "Rental-purchase agreement" means an agreement between a
48 merchant and a consumer for the use of personal property primarily

1 for personal, family, or household purposes, for an initial period of
2 four months or less, that is automatically renewable with each
3 payment after the initial rental period, and which permits but does
4 not obligate the consumer to renew the agreement beyond the initial
5 term or to acquire ownership of the property. A rental-purchase
6 agreement shall not be construed to be, nor governed by the laws
7 relating to:

8 (1) A retail installment contract as defined in subsection (b) of
9 section 1 of P.L.1960, c.40 (C.17:16C-1);

10 (2) A retail charge account as defined in subsection (r) of
11 section 1 of P.L.1960, c.40 (C.17:16C-1);

12 (3) A retail installment sale of goods or retail installment
13 contract for the sale of goods pursuant to P.L.1968, c.223
14 (C.17:16C-61.1 et seq.);

15 (4) A security interest as defined in subsection (35) of section 1
16 of P.L.2013, c.65 (C.12A:1-201);

17 (5) A loan of money or other property, a forbearance of debt, an
18 extension of credit, or any other transaction governed under
19 N.J.S.2C:21-19; or

20 (6) A loan of money or other property, a forbearance of debt, an
21 extension of credit, or any other transaction governed under
22 R.S.31:1-1 et seq.

23
24 4. A rental-purchase agreement shall be in writing, shall
25 contain all terms and conditions of the agreement in a single
26 document, and shall be subject to all terms and conditions of this
27 act. A merchant shall disclose the following items, as applicable, in
28 each rental purchase agreement:

29 a. The name and address of the consumer, the name, business
30 address and telephone number of the merchant, and the date on
31 which the agreement is executed;

32 b. A brief description of the rented property, sufficient to
33 identify the property to the consumer and the merchant, including
34 an identification number or model number, if applicable;

35 c. Whether the rented property is new or previously rented. If
36 the property is new, the model year, or, if not known, the date that
37 the merchant originally acquired the property; if the property is
38 used, the age or the model year.

39 d. The amount of any initial payment required of the consumer
40 at the time the agreement is executed or the rented property is
41 delivered, whichever is later, including any application or
42 processing charge or fee, insurance premium or liability waiver fee,
43 or fees for other optional services agreed to by the consumer and
44 any applicable tax, each of which shall be separately stated;

45 e. The amount of each periodic payment for the rented property
46 and the timing of each periodic payment under the rental-purchase
47 agreement;

- 1 f. The cash price of the rented property;
- 2 g. The periodic payment total, which shall specify the total
3 number and total dollar amount of all periodic payments necessary
4 to acquire ownership of the rented property if the consumer makes
5 all regularly scheduled periodic payments;
- 6 h. The difference between the cash price of the rented property
7 and the total dollar amount of all periodic payments necessary to
8 acquire ownership of the rented property, which amount shall be
9 identified as "cost of lease services";
- 10 i. A statement that the total dollar amount of periodic
11 payments necessary to acquire ownership of the rented property
12 does not include other charges that a consumer may incur, such as
13 late payment fees, processing fees, default, pickup and
14 reinstatement fees or charges and applicable taxes, which charges
15 shall be separately identified in the rental-purchase agreement, and
16 the dollar amount of each such charge disclosed;
- 17 j. A statement that the consumer will not acquire ownership of
18 the rented property unless the consumer has paid the total dollar
19 amount of periodic payments necessary to acquire ownership of the
20 rented property or has exercised the consumer's early purchase
21 option.
22 The statement shall include the following notice:
23 "NOTICE: You are renting this property. You will not own it
24 until you make all of the regularly scheduled payments or you use
25 the early purchase option. You do not have the right to keep the
26 property if you do not make the required payments or do not use the
27 early purchase option. If you miss a payment, the merchant can
28 repossess the property, but you may have the right to the return of
29 the same or similar property. This agreement explains your rights
30 and responsibilities. Read it carefully.";
- 31 k. A statement that the consumer may have cash or credit
32 purchase options that may result in a lower cost to acquire
33 ownership of the rented goods;
- 34 l. A statement clearly explaining the consumer's options for
35 acquiring ownership of the rented property, including a statement
36 that the consumer has the right to exercise an early purchase option
37 pursuant to section 12 of this act. The statement shall include a
38 clear summary of the terms of the early purchase option and shall
39 be accompanied by a statement or a chart showing the amount
40 required to exercise the consumer's early purchase option after each
41 periodic payment is made pursuant to the rental-purchase
42 agreement;
- 43 m. A statement that the consumer has the right to request a
44 written receipt for each payment made by cash or money order and
45 a written statement of account.
- 46 n. Whether the consumer is liable for loss or damage to the
47 merchandise and, if so, the maximum amount for which the
48 consumer may be liable, which in the case of loss shall in no event

1 exceed the lesser of the fair market value of the rented property at
2 the time of the loss or the amount the consumer would have paid to
3 exercise an early purchase option pursuant to section 12 of this act.
4 In the case of damage to the merchandise, other than normal wear
5 and tear, the consumer shall be liable for the lesser of the amount
6 the consumer would have paid to exercise an early purchase option
7 pursuant to section 12 of this act or the cost of the repair as
8 determined by the merchant;

9 o. A statement identifying the merchant as the party
10 responsible for maintaining and servicing the rented property while
11 it is being rented, a description of that responsibility;

12 p. A statement that, if any part of a manufacturer's express
13 warranty covers the rented property at the time the consumer
14 acquires ownership, it shall be transferred to the consumer if
15 permitted by the terms of the warranty;

16 q. A statement that the consumer may terminate the rental-
17 purchase agreement at any time without penalty by voluntarily
18 surrendering or returning the rented property to the merchant in
19 good repair, normal wear and tear excepted, upon the expiration of
20 any rental term, along with the payment of any past due rental
21 payments and accrued fees or charges;

22 r. The consumer's right to reinstate a terminated agreement
23 pursuant to section 10 of this act;

24 s. The grace periods and late payment fees that may apply to
25 late payments pursuant to section 9 of this act; and

26 t. The following notice, clearly and conspicuously displayed in
27 a prominent place in type not smaller than 10-point type:

28 "NOTICE: THIS AGREEMENT IS REGULATED BY STATE
29 LAW AND MAY BE ENFORCED BY THE DIVISION OF
30 CONSUMER AFFAIRS OR BY PRIVATE LEGAL ACTION.".

31
32 5. a. A merchant shall disclose the information required by
33 section 4 of this act to the consumer prior to the time the rental-
34 purchase agreement is executed by the consumer.

35 b. The rental-purchase agreement and the disclosures required
36 by section 4 of this act shall be contained in a single written
37 document on a form, the format and wording of which may be
38 prescribed by the director by regulation, consistent with and limited
39 to the requirements of section 4 of this act. A merchant may, at its
40 option, disclose more information than is required by section 4 of
41 this act, so long as the additional disclosures are made clearly and
42 conspicuously in writing as part of the rental-purchase agreement
43 and do not obscure the information that is required to be disclosed.

44 c. In a transaction involving more than one merchant, only one
45 merchant shall make the disclosures required by section 4 of this
46 act, but all merchants involved in a rental-purchase agreement shall
47 be bound by those disclosures.

1 d. At the time the rental purchase agreement is signed by the
2 consumer, the merchant shall:

3 (1) disclose to the consumer, orally or in a writing separate from
4 the agreement, that the consumer has a right to receive from the
5 merchant a written receipt for each payment made by cash or money
6 order and a written statement of account; and

7 (2) disclose to the consumer, in a writing separate from the
8 agreement, the consumer's rights provided for in section 8 of
9 P.L. , c. (C.) (now pending before the Legislature as this
10 bill).

11 e. Upon the request of the consumer, the merchant shall
12 provide the information as required by section 4 in an exemplar of
13 the rental-purchase agreement covering the property specified by
14 the consumer and shall provide the consumer with a copy of the
15 proposed rental-purchase agreement prior to its execution. The
16 consumer may take this copy from the merchant's premises.

17 f. The merchant shall not obtain the consumer's signature on a
18 rental purchase agreement that contains blank spaces to be filled in
19 after such agreement has been signed.
20

21 6. a. The merchant shall deliver to the consumer a copy of the
22 completed rental-purchase agreement at the time that it is signed by
23 the consumer. The rental-purchase agreement shall not be
24 enforceable against the consumer until the consumer has received a
25 signed copy.

26 b. If a merchant advertises in a language other than English, or
27 if a language other than English is used in any oral sales
28 presentation or in negotiations leading to the execution of a rental-
29 purchase agreement, the merchant shall offer a rental-purchase
30 agreement written in the language used in the advertisement, oral
31 sales presentation, or negotiations.

32 c. Except as otherwise required by this section, a rental-
33 purchase agreement shall be written in plain English.

34 d. Nothing in this section shall be construed to prohibit the use
35 of an agreement or notice written in both English and another
36 language so long as the agreement or notice otherwise complies
37 with the requirements of this act.
38

39 7. During the term of any rental-purchase agreement, a
40 merchant shall:

41 a. Upon request by a consumer, provide a written receipt for
42 each payment made by cash or money order;

43 b. Upon request by a consumer, provide a written statement of
44 account within seven days of the consumer's request;

45 c. Maintain the rented property in good working condition. If a
46 necessary repair cannot be completed within a reasonable time, the
47 merchant shall provide replacement property for the consumer to
48 use until the original property can be repaired. A merchant is not

1 required to repair or replace property that has been damaged as a
2 result of improper use or a negligent or intentional act of the
3 consumer. All replacement property shall be comparable in quality,
4 age, condition, and warranty coverage to the replaced property;

5 d. Deliver and pick up the property at no additional charge to
6 the consumer if the property is too large to be hand carried by the
7 consumer; and

8 e. Upon written request by a consumer, during the term of a
9 rental-purchase agreement and for a period of 12 months after the
10 consumer made the last payment, provide a copy of the consumer's
11 payment history to a financial institution, consumer credit reporting
12 agency or other third person designated by the consumer.

13

14 8. a. If a consumer experiences an interruption or reduction of
15 25% or more of income due to involuntary job loss, involuntary
16 reduced employment, illness, pregnancy, or disability, the merchant
17 shall reduce the amount of each rental payment by the same
18 percentage that the consumer's income has been diminished, up to
19 50% of the rental payment, for the period during which the
20 consumer's income is interrupted or reduced, but only if:

21 (1) The rental payments that have actually been made by the
22 consumer are equal to or greater than one-half the total of payments
23 necessary to acquire ownership of the rented property; and

24 (2) The consumer requests the reduction in rental payment
25 amount and provides the merchant with reasonable evidence as to
26 the amount and cause of the interruption or reduction in income.

27 b. (1) If the amount of each rental payment is reduced pursuant
28 to this section, the number of payments necessary to acquire
29 ownership may be increased, provided that the total dollar amount
30 of payments necessary to acquire ownership of the rented property
31 shall not be increased and the rights and duties of the consumer and
32 merchant shall not otherwise be affected.

33 (2) The merchant shall provide the consumer with a written
34 statement of the amount of each reduced rental payment and the
35 number of periodic payments at that reduced amount that would be
36 necessary to acquire ownership of the rented property under the
37 reduced payment schedule, which statement shall supersede the
38 payment schedule established in the original rental-purchase
39 agreement but shall be subject to revision and supersession in
40 accordance with paragraph (2) of subsection d. of this section.

41 c. At reasonable intervals following the initial reduction in
42 rental payments pursuant to this section, the merchant may require
43 the consumer to provide evidence of the consumer's income, and
44 that the cause of the interruption or reduction in income still exists.

45 d. (1) If the consumer's income is restored, the merchant may
46 increase the amount of each rental payment, but in no event shall
47 the amount of a rental payment or the total dollar amount of
48 payments necessary to acquire ownership of the rented property

1 exceed the amounts disclosed in the rental-purchase agreement.

2 (2) The merchant shall provide the consumer with a written
3 statement of the amount of each revised rental payment and the
4 number of periodic payments at that revised amount that would be
5 necessary to acquire ownership of the rented property under the
6 revised payment schedule, which statement shall supersede the
7 reduced payment schedule established pursuant to paragraph (2) of
8 subsection b. of this section.

9
10 9. A merchant may require a consumer to pay a late fee if, at
11 the end of any rental term, the consumer fails to voluntarily
12 surrender or return the rented property to the merchant or renew the
13 rental-purchase agreement for an additional term, subject to the
14 following limitations:

15 a. For rental-purchase agreements with weekly renewal terms,
16 no late fee shall be assessed until the payment is made more than
17 two calendar days past due;

18 b. For rental-purchase agreements with renewal terms longer
19 than one week, no late fee shall be assessed until the payment is
20 more than five calendar days past due;

21 c. Late fees assessed pursuant to this section shall not exceed
22 \$5;

23 d. Only one late fee may be assessed on each renewal payment,
24 regardless of how long the payment remains past due;

25 e. Payments received shall be applied first to the payment of
26 the past due renewal payment, then to applicable late fees and other
27 charges; and

28 f. A late fee may be collected at the time it accrues, or at any
29 time thereafter.

30
31 10. a. A consumer who has terminated a rental-purchase
32 agreement and voluntarily surrendered or returned the property to
33 the merchant shall have the right to reinstate the terminated
34 agreement without losing any rights or options previously acquired
35 if the following conditions are met:

36 (1) The consumer voluntarily surrendered or returned the
37 property to the merchant within seven days of the termination of the
38 agreement; and

39 (2) Not more than 90 days have passed since the property was
40 voluntarily surrendered or returned to the merchant; except that if
41 the consumer has paid an amount equal to or greater than one-half
42 of the total amount of payments necessary to acquire ownership of
43 the rented property, the reinstatement period shall be extended to
44 one year following voluntary surrender or return of the property.

45 b. The merchant may require the payment of all unpaid past
46 due renewal payments for periods when the consumer retained the
47 property, any applicable late fees, other accrued fees or charges,
48 and a reinstatement fee not to exceed \$5, prior to reinstatement

1 pursuant to subsection a. of this section.

2 c. Nothing in this section shall prevent a merchant from
3 attempting to repossess the property or from bringing an action to
4 recover possession of the property, but such action may not be made
5 or brought until more than seven days after termination of the
6 rental-purchase agreement. A consumer's right to reinstate an
7 agreement shall not expire because of the repossession or action to
8 recover possession.

9 d. Upon reinstatement, the merchant shall provide the
10 consumer with the same property, if available, and in the same
11 condition as when it was voluntarily surrendered or returned to the
12 merchant, or with substitute property of comparable quality and
13 condition.
14

15 11. a. The cash price of new rented property offered under a
16 rental-purchase agreement shall not exceed the greater of the
17 following:

18 (1) The manufacturer's list or suggested retail price;

19 (2) The published or advertised selling price of the same
20 property in the same trade area within the 90-day period preceding
21 the date of the rental purchase agreement; or

22 (3) The merchant's documented cost, including freight costs,
23 multiplied by the following factors;

24 (a) For appliances, the applicable factor shall be 1.75;

25 (b) For electronics, other than computers, having a merchant
26 cost of less than \$150, the applicable factor shall be 1.75;

27 (c) For electronics, other than computers, having a merchant
28 cost of greater than or equal to \$150, the applicable factor shall be
29 2.00;

30 (d) For computers, the applicable factor shall be 1.85;

31 (e) For furniture, the applicable factor shall be 2.25; and

32 (f) For items not listed in subparagraphs (a) through (e) of this
33 paragraph, the applicable factor shall be 2.00.

34 b. The cash price of used rented property offered pursuant to a
35 rental-purchase agreement shall not exceed the maximum permitted
36 cash price of the rented property when new, as determined pursuant
37 to subsection a. of this section, and shall be decreased in accordance
38 with an adjustment for the following relevant factors:

39 (1) The frequency and duration of prior rentals and whether the
40 rented property has been repaired one or more times; and

41 (2) The condition of the rented property.

42 c. A merchant shall maintain records that establish that the
43 price disclosed as the cash price complies with the requirements of
44 this section for a period of at least four years following the
45 termination of the agreement.
46

47 12. a. A merchant shall not offer a rental purchase agreement
48 in which the total dollar amount of payments necessary to acquire

1 ownership of the rented property exceeds twice the cash price of the
2 property. Upon payment of the total dollar amount of payments
3 necessary to acquire ownership of the rented property, the consumer
4 shall automatically acquire ownership of the rented property, the
5 rental-purchase transaction shall terminate, and the merchant shall
6 provide the consumer with written acknowledgment of the transfer
7 of ownership to the consumer. Any rental payments made to the
8 merchant that exceed the total amount of payments necessary to
9 acquire ownership of the rented property shall be refunded to the
10 consumer.

11 b. At any time after the initial rental payment, a consumer may
12 purchase the rented property that is the subject of the rental-
13 purchase agreement by tendering an amount equal to the original
14 cash price of the rented property, minus at least 50% of all rental
15 payments previously made by the consumer.
16

17 13. a. A rental-purchase agreement may not contain a
18 provision:

19 (1) Requiring a confession of judgment or giving a power of
20 attorney to confess judgment;

21 (2) Requiring a garnishment of wages or an assignment of
22 wages;

23 (3) Granting the merchant a security interest, or other claim to a
24 property interest, in any property except the rented property
25 delivered by the merchant pursuant to the rental-purchase
26 agreement;

27 (4) Authorizing a merchant or an agent of a merchant to
28 unlawfully enter upon the consumer's premises or to commit a
29 breach of the peace during recovery of possession of the property;

30 (5) Waiving a defense, counterclaim, or right the consumer may
31 have against a merchant or an agent of a merchant;

32 (6) Requiring a balloon payment in addition to regular rental
33 payments in order to acquire ownership of the rented property, or
34 requiring payments in excess of the total of payments necessary to
35 acquire ownership of the rented property as disclosed in the rental-
36 purchase agreement;

37 (7) Requiring the purchase of insurance or liability waiver from
38 the merchant to cover the rented property;

39 (8) Waiving any provision of this act or the regulations that may
40 be promulgated hereunder;

41 (9) Requiring a consumer to pay attorneys fees and costs or any
42 collection or repossession charges in excess of those allowable
43 under this act and applicable court rules; or

44 (10) Stating that mere failure to return the rented property
45 constitutes probable cause for a criminal action.

46 b. A provision in a rental-purchase agreement that is prohibited
47 by this act shall be void and unenforceable and a violation of this
48 act. A rental-purchase agreement that contains any provision that is

1 prohibited by this act shall be voidable by the consumer.

2

3 14. a. A merchant in communication with any person other
4 than the consumer for the purpose of acquiring information as to the
5 location of a consumer shall:

6 (1) Identify the merchant and state that the merchant is
7 confirming or correcting location information concerning the
8 consumer;

9 (2) Not communicate by postcard;

10 (3) Not use any language or symbol on any envelope or in the
11 contents of any communication that indicates that the
12 communication relates to the recovery or repossession of the
13 property; and

14 (4) Not communicate with any person other than the consumer's
15 attorney, after the merchant knows the consumer is represented by
16 an attorney with regard to the rental-purchase agreement and has
17 knowledge of, or can readily ascertain, the attorney's name and
18 address, unless the attorney consents to direct communication from
19 the merchant to the consumer.

20 b. Without the prior consent of the consumer given directly to
21 the merchant or the express permission of a court of competent
22 jurisdiction, a merchant shall not communicate with a consumer in
23 connection with the recovery or repossession of property:

24 (1) At the consumer's place of employment; or

25 (2) At any unusual time or place or a time or place known or
26 which should have been known to be inconvenient to the consumer.

27 In the absence of knowledge of circumstances to the contrary, a
28 merchant shall assume that the convenient time for communicating
29 with a consumer is after 8:00 a.m. or before 9:00 p.m., local time, at
30 the consumer's location.

31 c. A merchant shall not communicate in connection with a
32 rental-purchase agreement with any person other than the consumer,
33 the consumer's attorney, or the merchant's attorney, except:

34 (1) as reasonably necessary to acquire the location information
35 concerning the consumer as provided under subsection a. of this
36 section;

37 (2) with the express prior consent of the consumer; or

38 (3) upon express permission of a court of competent
39 jurisdiction, or as reasonably necessary to effectuate a postjudgment
40 judicial remedy.

41 d. If a consumer notifies the merchant in writing that the
42 consumer wishes the merchant to cease further communication with
43 the consumer, the merchant shall not communicate further with the
44 consumer with respect to the rental-purchase agreement, except:

45 (1) To advise the consumer that the merchant's further efforts
46 are being terminated;

47 (2) To notify the consumer that the merchant shall invoke
48 specified remedies available by law which are ordinarily invoked by

1 the merchant; or

2 (3) To effectuate, where necessary, any postjudgment judicial
3 remedy.

4 e. A merchant may not harass, oppress, or abuse any person in
5 connection with a rental-purchase agreement. The following
6 conduct is a violation of this section:

7 (1) The use or threat of violence or any criminal means to harm
8 the physical person, reputation, or property of any person;

9 (2) The use of obscene, profane, or abusive language;

10 (3) Causing a telephone to ring, or engaging any person in
11 telephone conversation repeatedly or continuously with intent to
12 annoy, abuse, or harass the person;

13 (4) The placement of telephone calls without disclosure of the
14 caller's identity; and

15 (5) Attempting to repossess the property before 7 a.m. or after
16 11 p.m.

17

18 15. a. A renegotiation occurs when an existing rental-purchase
19 agreement is satisfied and replaced by a new agreement undertaken
20 by the same merchant and consumer. A renegotiation shall be
21 considered a new agreement requiring new disclosures pursuant to
22 this act. The following events are not renegotiations and do not
23 require new disclosures:

24 (1) The addition or return of property in a multiple-item
25 agreement, or the substitution of property, so long as the periodic
26 rental payment allocable to the rental term is not changed by more
27 than 15%;

28 (2) A deferral or extension of one or more renewal payments or
29 portions thereof;

30 (3) A reduction in the charges in an agreement; and

31 (4) An agreement involved in a court proceeding.

32 b. No new disclosures are required for any extension of a
33 rental-purchase agreement effectuated by an automatic renewal
34 upon payments made after the initial term.

35 c. With respect to a rental payment made on a rental-purchase
36 agreement after additional property items have been added, the
37 payment shall be considered as allocated among each of the
38 separate property items included, in full to the property item
39 included under the agreement earliest in time, and such allocated
40 portions of that payment shall be apportioned toward the rental-
41 purchase fee and the cash price for that item of property. The
42 merchant, before repossessing or attempting to repossess any
43 property under any such agreement, shall actually allocate in such
44 manner all such payments made to him by the consumer. When the
45 amount owing on any separate purchase has been fully paid, the
46 property so paid for shall become the absolute property of the
47 consumer and shall not be subject to repossession for any
48 subsequent default on the agreement. The consumer may, at his

1 option, choose to allocate payments among multiple items under a
2 rental-purchase agreement in a different manner, provided that such
3 agreement is in writing signed by the consumer and states in plain
4 language that the consumer understands that failure to pay an
5 installment may result in forfeiture of the property item included
6 under the agreement earliest in time, regardless of the amount of
7 money the consumer has paid toward ownership of that item.

8
9 16. a. If an advertisement for a rental-purchase agreement
10 refers to or states the dollar amount of any payment and the right to
11 acquire ownership of any one specific item, the advertisement shall
12 also clearly and conspicuously disclose the following information,
13 as applicable:

14 (1) That the advertised transaction is a rental-purchase
15 agreement;

16 (2) The cash price of the advertised property;

17 (3) The minimum rental period, and the total number and total
18 dollar amount of payments necessary to acquire ownership of the
19 rented property;

20 (4) The cost of lease services;

21 (5) A statement that the consumer will not acquire ownership of
22 the advertised property unless the total amount of payments
23 necessary to acquire ownership of the rented property is paid; and

24 (6) Whether the property is new or used.

25 b. Any personal property displayed or offered under a rental-
26 purchase agreement shall bear a tag that clearly and conspicuously
27 discloses the following information:

28 (1) The cash price of the displayed property;

29 (2) The dollar amount of periodic payment and the payment
30 period;

31 (3) The total dollar amount and the total number of payments
32 necessary to acquire ownership of the property;

33 (4) The cost of lease services;

34 (5) An identification number or model number of the property;
35 and

36 (6) Whether the displayed property is new or used and if the
37 property is new, the model year, or, if not known, the date that the
38 merchant originally acquired the property; if the property is used,
39 the age or the model year.

40 c. An owner or agent of any medium in which an advertisement
41 for a rental-purchase agreement appears or is disseminated shall not
42 be liable under this act.

43 d. The disclosure requirements of subsection a. of this section
44 do not apply to any advertisement that does not refer to or state the
45 amount of any periodic payment, or that is published in the business
46 pages of a telephone directory, or in any similar directory of
47 businesses.

48 e. Notwithstanding the provisions of this section, a merchant

1 may make the required disclosures in the form of a list or catalogue
2 that is readily available to consumers if displaying a price tag would
3 be impractical due to the size or nature of the merchandise.

4 f. An advertisement for a rental-purchase agreement shall not
5 state that a specific lease of any property at specific amounts or
6 terms is available unless the merchant usually and customarily
7 leases or will lease the property at those amounts or terms.

8
9 17. a. A merchant creates an express warranty to a consumer
10 by any of the following:

11 (1) Any affirmation of fact or promise made by the dealer to the
12 consumer which relates to the property creates an express warranty
13 that the property will conform to the affirmation or promise;

14 (2) Any description of the property creates an express warranty
15 that the property will conform to the description; or

16 (3) Any sample or model exhibited to the consumer by the
17 merchant creates an express warranty that the property actually
18 delivered to the consumer will conform to the sample or model.

19 b. A warranty that the property will be merchantable is implied
20 in every rental-purchase contract. For property to be merchantable,
21 the property shall be at least such as:

22 (1) Pass without objection in the trade under the description in
23 the rental-purchase agreement;

24 (2) Are fit for the ordinary purposes for which property of that
25 type is used; and

26 (3) Conform to any promises or affirmation of fact made on the
27 property, container, or label.

28 c. In addition to any other implied warranties provided by law
29 or by this act, a merchant creates an implied warranty that property
30 will be fit for the purpose for which it is intended, if at the time the
31 rental-purchase agreement is made, the merchant knows or
32 reasonably should have known that the consumer is relying on the
33 merchant's skill or judgment to select or furnish suitable property.

34 d. Any exclusion, modification or limitation of a warranty,
35 express or implied, shall be void.

36
37 18. a. If a court as a matter of law finds a rental-purchase
38 agreement or any clause of a rental-purchase agreement to be
39 unconscionable, the court may:

40 (1) Refuse to enforce the rental-purchase agreement;

41 (2) Enforce the remainder of the rental-purchase agreement
42 without the unconscionable clause; or

43 (3) Limit the application of any unconscionable clause to avoid
44 an unconscionable result.

45 b. If it is claimed or appears to the court that a rental-purchase
46 agreement or any clause of the rental-purchase agreement may be
47 unconscionable, the parties shall be afforded a reasonable
48 opportunity to present evidence as to the agreement's setting,

1 purpose and effect to aid the court in the determination.

2 c. For the purpose of this section, a rental payment, charge or
3 practice expressly permitted by this act is not in itself
4 unconscionable.

5
6 19. a. A merchant that fails to comply with the requirements of
7 this act shall be liable to a consumer actually damaged by a
8 violation of this act in an amount equal to the greater of the
9 following:

10 (1) The actual damages sustained by the consumer as the result
11 of the merchant's failure to comply with this act; or

12 (2) (a) In the case of an individual action, 25% of the total of
13 payments necessary to acquire ownership, but not less than \$100
14 nor more than \$1,000.

15 (b) In the case of a class action, the amount the court determines
16 to be appropriate, except that as to each member of the class no
17 minimum recovery is applicable.

18 A merchant found liable under this act shall also be liable to the
19 consumer for the costs of the action and reasonable attorneys' fees,
20 as determined by the court.

21 b. No consumer shall offset any amount for which a merchant
22 is potentially liable under this section against any amount owed by
23 the consumer, unless the amount of the merchant's liability has been
24 determined by judgment of a court of competent jurisdiction in an
25 action in which the merchant was a party. The provisions of this
26 subsection do not bar a consumer then in default under the terms of
27 a rental-purchase agreement from asserting a violation of this act as
28 an original action, or as a defense or counterclaim to an action
29 brought by the merchant.

30 c. An action under this section shall not be brought in any
31 court of competent jurisdiction more than four years after the date
32 of the occurrence of a violation that is the subject of the suit.

33 d. If a merchant assigns or transfers a rental-purchase
34 agreement to a third party, all of the consumer's rights created by
35 the rental-purchase agreement and this act are preserved.

36 e. It is an unlawful practice and a violation of P.L.1960, c.39
37 (C.56:8-1 et seq.) to violate any provision of this act.

38 f. A consumer shall not recover damages under both
39 subsections a. and e. of this section, in the same action brought for a
40 violation of a provision of this act.

41
42 20. The director may promulgate rules and regulations pursuant
43 to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-
44 1 et seq.), as may be necessary to effectuate the purposes of this act.

45
46 21. This act shall take effect on the first day of the fourth
47 month after enactment.

STATEMENT

This bill protects consumers and clarifies the rights and responsibilities of consumers and merchants by defining and regulating rental-purchase agreements involving personal property used for personal, family, or household purposes. The bill further defines rental-purchase agreements by providing that rental-purchase agreements are not governed by certain other statutes, including usury statutes.

The bill requires a merchant to disclose in writing certain items at or prior to the time the rental-purchase agreement is executed by the consumer. These disclosures include the cash price of the rented property and the total dollar amount of all periodic payments necessary for the consumer to acquire ownership of the property.

The bill prohibits the inclusion of certain provisions in rental-purchase agreements. It also provides, in certain instances, for a consumer's right to reinstatement of the rental-purchase agreement and for a lowering of payments if a consumer suffers an involuntary loss of or reduction in income. The bill also regulates permissible late fees and defines renegotiations of rental-purchase agreements.

In addition, the bill prohibits a merchant from offering a rental-purchase agreement in which the total payments necessary to acquire ownership of the rented property exceed twice the property's cash price. As defined in the bill, "cash price" means the price for which the merchant would sell the rented property to a consumer for cash on the date of the rental-purchase agreement, subject to certain limitations applicable to new rented property and used rented property, as provided in the bill.

During the term of the rental-purchase agreement, the bill requires merchants to maintain the rented property in good condition, provide written receipts for cash or money order payments and provide comparable replacement property in certain circumstances.

The bill also regulates a merchant's debt collection and repossession practices, creates express and implied warranties as to the rental property and provides that a court can find all or part of a rental-purchase agreement to be unconscionable and unenforceable.

The bill provides options for recovery in damages for a consumer who suffers a loss due to a violation of the bill's provisions, including individual actions and class actions, and recovery under the "Consumer Fraud Act." Finally, the bill requires the director of the Division of Consumer Affairs to promulgate regulations necessary to effectuate the purposes of the act.